

NTSB Order No. EM-187

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 10th day of July, 2000

Appellant.

Docket ME-167

Appellant seeks review¹ of a decision of the Vice Commandant (Appeal No. 2610, dated August 4, 1999) affirming a decision and order entered by Coast Guard Chief Administrative Law Judge Joseph N. Ingolia on January 28, 1998, following a two-day

¹Appellant was represented by counsel at the hearing stage of this proceeding, but has subsequently represented himself. His request for oral argument is denied, as we find in the administrative record an adequate basis for resolving the issues raised on the appeal.

evidentiary hearing that concluded on June 20, 1997.² The law judge sustained a charge of misconduct and ordered that the appellant's Merchant Mariner's License (No. 776593) be suspended for six months and that all of appellant's licenses and documents thereafter be revoked on twelve months' remitted probation. As we find no valid basis in appellant's numerous assignments of error for overturning the Vice Commandant's affirmance of the law judge's decision, appellant's appeal, to which the Coast Guard decided not to file a reply in opposition,³ will be denied.⁴

²Copies of the decisions of the Vice Commandant and the law judge are attached.

³The appellant, in a May 24, 2000 letter to the Board, asserts that the Coast Guard, in advising the Board of its decision not to file a reply brief, "stat[ed] that they did not wish to contest the Appellant's Appeal brief." The actual advice received from the Coast Guard was that it believed that a reply brief was "unwarranted." In any event, we find no merit in appellant's contention that the decision not to file a reply supports dismissal of the charge against his license. We also find no merit in appellant's contention in the same letter that dismissal of the Coast Guard's charge is warranted by the fact that he had not yet received a decision from the Board on his May 18th request for expedited consideration of his appeal. That the pendency of appellant's appeal here might have an adverse impact on his employment prospects is not an adequate reason for considering his appeal out of turn.

⁴Appellant's notice of appeal (dated August 13, 1999) was received on August 17, 1999, the same date on which the Board received his forty-two page, single-spaced appeal brief (dated August 16). On December 3, 1999, the Board received, for the first time, a nine-page, single-spaced document appellant styled an "Appeal Addendum," which recites, on its face, "Date of addendum August 16, 1999." No reason is offered for appellant's asserted concern, some three months after the fact, that he may not have "include[d] [the addendum] with his appeal" (cover letter for addendum dated November 21, 1999), and we find it difficult to believe that the appellant would have created, but neglected to file, on the same date that he served his first lengthy brief, a second one covering, and laboriously elaborating upon, many of the same points. In this context, we seriously

The misconduct charge at issue in this proceeding arose from the appellant's application to upgrade his Master's license from one authorizing his service on 500 gross ton inland steam or motor vessels to one permitting his operation as master on vessels up to 1600 gross tons. Specifically, appellant is alleged to have falsely and fraudulently claimed, in an effort to demonstrate his qualifications for the upgrade, "478 8-hour underway days" for a shipping company that the record shows had never employed him. Without such sea time, appellant was not eligible for the upgrade.

On appeal to the Board, appellant raises essentially the same, mostly extraneous, non-substantive objections he presented, to no avail, to the Vice Commandant, whose decision, in our view, comprehensively and fairly addressed all matters warranting discussion, as well as some that did not. Because we find that none of appellant's multitudinous contentions establishes reversible legal or factual error in the Vice Commandant's authoritative disposition of appellant's appeal, we will sustain the Coast Guard's decisions.

In closing, we should point out that the regulation implementing the Board's authority to review decisions of the Commandant, 49 CFR Part 825, states that we will only consider whether:

(a) A finding of material fact is erroneous;

question the verity of the addendum's signed certification of original service on the Board on August 16, 1999.

(b) A necessary legal conclusion is without governing precedent or is a departure from or contrary to law or precedent;

(c) A substantial and important question of law, policy, or discretion is involved; or

(d) A prejudicial procedural error has occurred.⁵

An issue for review under this standard is not presented by a barrage of disagreements with factual or legal resolutions that flow from a credibility assessment adverse to an appellant that is neither acknowledged nor shown to be erroneous. A reviewable issue is also not presented by contentions that do not attempt to demonstrate why the Coast Guard's reasons for rejecting specific arguments should not be allowed to stand. An appellant is not, of course, obligated to agree with the Coast Guard's assessment of the facts and law applicable or relevant to his case. An appellant is, however, obligated to explain to the Board why it should not agree with the Coast Guard's assessments. That task is not properly accomplished by arguing matters in dispute as though neither the law judge nor the Vice Commandant had considered or ruled on them. Rather, it is achieved by showing that the Vice Commandant's acceptance of the law judge's disposition of any and all substantial factual or legal objections is contrary, in a significant respect, to the record or controlling law. Appellant has

⁵See 49 CFR 825.15. A prejudicial procedural error typically refers to matters that can be shown to have adversely affected an appellant's ability to prepare or present a defense, not to negative economic consequences that may flow from the

not made such a showing here.

ACCORDINGLY, IT IS ORDERED THAT:

1. The appellant's appeal is denied; and
2. The Vice Commandant's decision affirming the law judge's decision and order and his denial of the petition to reopen the hearing is affirmed.

HALL, Chairman, HAMMERSCHMIDT, GOGLIA, BLACK, and CARMODY,
Members of the Board, concurred in the above opinion and order.

prosecution or upholding of a charge.